

name and address information ("BNA") for casual calling was not required. Comments of Bell Atlantic/NYNEX at p. 2. The BNA order the RBOCs refer to was adopted on February 1, one week prior to the signing of the 1996 Act. See *In The Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information For Joint Use Calling Cards*, Third Order on Reconsideration, 11 FCC Rcd 6835 (Adopted Feb. 1, 1996) ("*BNA Third Reconsideration Order*"). Therefore, it is obvious that the Commission has not considered this issue in the context of the new law, contrary to what Bell Atlantic/NYNEX alleges.

Additionally, commenting LECs have taken a statement out of context from the *BNA Third Reconsideration Order* to uphold their arguments. The rules promulgated in the *BNA Third Reconsideration Order* were the product of a proceeding which focused exclusively on the need for BNA in connection with billing for operator-assisted services such as third-party billed calls, collect calls and calls billed to LEC joint use calling cards balanced against the need to prevent fraud and safeguard privacy. See *BNA Third Reconsideration Order*, 11 FCC Rcd at 6858, ¶¶ 40 - 42. As the Commission noted in that order, the separate issue of mandatory disclosure of BNA for all IXC traffic (versus the specific calling card and third-party billed traffic which was the focus of the rulemaking) was not before the Commission in that proceeding. *Id.* Nonetheless, to clarify prior rulings, the Commission held that "LECs are only prohibited from disclosing the BNA information associated with calling card, third party, and collect calls when the subscriber affirmatively withholds consent for BNA disclosure." *Id.* at ¶ 40. In that context, which the LECs omitted from their comments in this proceeding, the Commission concluded, "BNA information may be disclosed to the IXC carrying [casual calls] whenever the customer chooses

that IXC rather than the one to which the originating loop is presubscribed." *Id.* at ¶ 41. The Commission's rationale was premised on an earlier order in the same proceeding where it determined that BNA is obtained by LECs as part of their provision of common carrier service and such BNA should be provided on a common carrier basis. *See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 8 FCC Rcd 4478 (1993)(*Second Report and Order*). Accordingly, the Commission should issue a declaratory ruling extending the same logic to BNA for casual calling.

C. LEC Arguments That IXCs Are Not Entitled to Purchase Billing Information As A Network Element Are Erroneous.

LEC assertions that IXCs do not purchase physical elements of the phone network on an unbundled basis are nonsensical and flatly contrary to fact. Comments of Bell Atlantic at p. 4 Their further assertions that ACTA's IXC members are not entitled to purchase network elements solely to provide interexchange services (on which they then base a self-serving conclusion that IXCs are therefore not entitled to billing information as a network element under the 1996 Act) are equally nonsensical and erroneous. *Id.*

Bell Atlantic cites the Commission's Order on Reconsideration in *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 13042, 13049 (1996) ("*Order on Reconsideration*"). Comments of Bell Atlantic at pp. 3-4. Contrary to Bell Atlantic's assertions, the Commission was in no way addressing the need for, right to obtain, or status of billing information as a network element. Rather, the Commission was addressing the issue of requesting carriers purchasing local loops and local switching as unbundled elements in order to provide exchange access. *Order on Reconsideration* at ¶¶ 12-13.

The First Report and Order in *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*First Report and Order*") clearly distinguishes between network elements that are physical facilities used in the provision of telecommunications services and features such as billing and collection information that go beyond mere physical delivery of the service. *Id.* Thus, local switches and operations support systems, under which billing and collection information would be subsumed, are treated as clearly distinct network elements. *First Report and Order*, at ¶¶ 27, 249, 261-262. The Commission addressed unbundled switching elements, which would not cover billing and collection information, in the *Order on Reconsideration*.³

ACTA's request does not involve carriers seeking to obtain physical facilities on an unbundled basis, but only seeks to have ILECs give access to their billing and collection information to permit the continuation of long distance services being offered on a competitive basis through established dial-around techniques. Moreover, Bell Atlantic's argument is simply absurd and cannot be taken seriously. If its argument had any merit, it would result in the *Order on Reconsideration* having the effect of prohibiting dial-around services. The *Order on Reconsideration* had no such intent or purpose and cannot be so construed without doing violence to the principles of due process

³ This is a distinction about which Bell Atlantic/NYNEX is fully aware, and one that they emphasized in their challenge to the *First Report and Order* in the Eighth Circuit. The RBOCs asserted that operational support systems "are not facilities or equipment used in the routing and transmission of calls." *Iowa Utilities Board v. Federal Communications Commission*, No. 96-3321 (and consolidated cases), Brief for Petitioners Regional Bell Companies and GTE, at p.50-51. Bell Atlantic/NYNEX is now arguing the converse of this proposition by conveniently trying to subsume such operational support information into the notion of an unbundled switching element to craft an illusory restriction on the access of requesting carriers to certain network elements.

such as prior notice and opportunities to comment which are the foundation of valid administrative action.⁴

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

⁴ As the Commission decides these issues, it should remember its own recent declarations:

[O]ur goal is to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition in the new markets they are entering -- interLATA services and manufacturing. The section 272 safeguards, among other things, are intended to protect competition in these markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage.

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, ¶ 206 (released Dec. 24, 1996), *pet. for rev. pending sub nom. Bell Atlantic v. FCC*, Case No. 97-1067 (D.C.Cir. filed January 31, 1997).

III. CONCLUSION

In sum, federal statutory and administrative case law requires LECs to provide billing and collection information to IXC's that employ casual calling. The Commission not only has the authority to require them to do so, but has a duty to act as well. Accordingly, the Commission should take action in this case to preserve fair competition, consumer choice and the health of the Nation's competitive telecommunications industry.

Respectfully submitted,

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION

By: Robert M. McDowell

Charles H. Helein
General Counsel
Robert M. McDowell
Deputy General Counsel

Of Counsel:

Harisha J. Bastiampillai
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
(703) 714-1300 (Telephone)
(703) 714-1330 (Facsimile)

Dated: June 9, 1997

mm/070/10xxxrep

CERTIFICATE OF SERVICE

I, Suzanne M. Helein, a secretary in the law offices of Helein & Associates, P.C., do hereby state and affirm that copies of the foregoing "Reply Comments of America's Carriers Telecommunication Association," in File No. ENF-97-05, were served this 9th day of June, 1997, in the manner indicated, upon the following:

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554
(Via Hand Delivery)

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554
(Via Hand Delivery)

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554
(Via Hand Delivery)

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554
(Via Hand Delivery)

William E. Kennard, General Counsel
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554
(Via Hand Delivery)

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554
(Via Hand Delivery)

Darius B. Withers
Federal Communications Commission
2025 M Street, N.W.
Room 6333
Washington, D.C. 20554
(Via Hand Delivery)

ITS
Federal Communications Commission
1919 M Street, N.W.
Room 246
Washington, D.C. 20554
(Via Hand Delivery)

Mary L. Brown
Donna M. Roberts
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(Via First Class Mail)

David Alan Nall
Squire, Sanders & Dempsey
Counsel for MCI Telecommunications Corporation
1201 Pennsylvania Avenue, N.W.
Post Office Box 407
Washington, D.C. 20044
(Via First Class Mail)

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
Counsel for Telecommunications Resellers Association
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(Via First Class Mail)

Michael G. Hoffman, Esq.
Senior Vice President
Legal & Regulatory Affairs
VarTec Telecom, Inc.
3200 W. Pleasant Run Road
Lancaster, Texas 75146
(Via First Class Mail)

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications, Inc.
175 E. Houston, Room 1254
San Antonio, Texas 78205
(Via First Class Mail)

Marlin D. Ard
Randall E. Cape
SBC Communications, Inc.
140 New Montgomery Street, Room 1525
San Francisco, California 94105
(Via First Class Mail)

Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101
(Via First Class Mail)

Kathryn Marie Krause
U S WEST, Inc.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036
(Via First Class Mail)

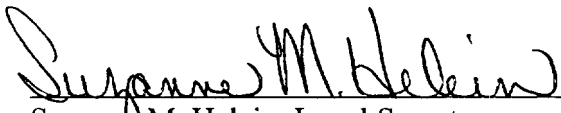
M. Robert Sutherland
A. Kirven Gilbert III
BellSouth Corporation
1155 Peachtree Street, N.E.
Suite 1700
Atlanta, Georgia 30309-3610
(Via First Class Mail)

James G. Pachulski
Bell Atlantic Telephone Companies
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(Via First Class Mail)

William J. Balcerski
NYNEX Telephone Companies
1095 Avenue of the Americas
New York, New York 10036
(Via First Class Mail)

Roger J. Meyers, COO
NEVADACOM
2926 Lake East Drive
The Lakes, Nevada 89117
(Via First Class Mail)

Preferred Carrier Services, Inc.
500 Grapevine Highway
Suite 300
Hurst, Texas 76054
(Via First Class Mail)


Suzanne M. Helein, Legal Secretary

CERTIFICATE OF SERVICE

I, Michele Grasse, a secretary in the law office of Helein & Associates, P.C., do hereby state and affirm that copies of the foregoing "Reply Comments of America's Carriers Telecommunication Association" CC Docket No. RM-9108, were served via hand delivery this 13th day of August, 1997, on the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554
(Hand Delivery)

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554
(Hand Delivery)

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554
(Hand Delivery)

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

William E. Kennard, General Counsel
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554
(Hand Delivery)

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554
(Hand Delivery)

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554
(Hand Delivery)

Michele Grasse, Legal Secretary